

1 **ALBERT SANDOVAL**  
 2 *Plaintiff in pro se*  
 3 528 Palisades Drive, #720  
 4 Pacific Palisades, CA 90272  
 5 Telephone: (213) 949-2323  
 6 albertsandoval@mac.com

FILED

2010 MAR 12 P 1:14

 RICHARD W. WICKING  
 CLERK OF DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

 IFP  
 NP  
 (9)

ADR

7 **IN THE UNITED STATES DISTRICT COURT**  
 8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

 9 C/SI  
 10  
 11 ALBERT SANDOVAL, an individual,

 CV 10-01066  
 CASE NO.

Plaintiff,

COMPLAINT:

SI

vs.

 13 ZILLIONTV CORPORATION, a Delaware  
 14 corporation, SIERRA VENTURES  
 15 ASSOCIATES IX, L.P., SIERRA  
 16 VENTURES IX, L.P., SIERRA VENTURES  
 17 X, L.P., state entities unknown, QWEST  
 18 COMMUNICATIONS INTERNATIONAL,  
 19 INC., a Delaware corporation, MITCHELL  
 20 BERMAN, an individual, DAVID  
 21 CHARLES SCHWAB, an individual, JACK  
 22 LAWRENCE, an individual, ELIZABETH  
 23 SEIDNER DAVIDOFF, an individual and  
 24 DOES 1-100, inclusive,

Defendants.

- (1) WILLFUL COPYRIGHT INFRINGEMENT;
- (2) CONTRIBUTORY COPYRIGHT INFRINGEMENT
- (3) VICARIOUS COPYRIGHT INFRINGEMENT
- (4) DECLARATORY AND INJUNCTIVE RELIEF;
- (5) DAMAGES

26 Plaintiff ALBERT SANDOVAL, an individual (hereinafter referred to as "Sandoval"  
 27 or "Plaintiff") hereby submits this Complaint against Defendants listed above and allege as  
 28 follows:

## **JURISDICTION AND VENUE**

1  
2  
3       1.       This complaint alleges copyright infringement arising under the Copyright  
4 Acts 1909 and 1976, 17 U.S.C. §§ 101 et seq., and a claim for declaratory relief pursuant to  
5 the Declaratory Judgment Act, 28 U.S.C. § 2201 (“a case of controversy within its  
6 jurisdiction”). This Court has subject matter jurisdiction over these federal question claims  
7 pursuant to 28 U.S.C. §§ 1331 and 1338 (a) and (b).

8       2.       Venue is proper in this district under 28 U.S.C. §§ 1491 and 1400(a) because  
9 the copyright infringement that gives rise to these claims occurred in this district, and  
10 because each of the Defendants either resides or is doing business here.

## **INTRODUCTION**

11  
12  
13       3.       The Plaintiff entered into an Independent Contractor agreement  
14 (“Agreement”) with the Defendants in July of 2009 and was hired as a marketing consultant,  
15 a true and correct copy of the Agreement is attached hereto as EXHIBIT A. The Agreement  
16 was signed by the Defendant DAVID CHARLES SCHWAB, an agent of SIERRA  
17 VENTURES for Defendant ZILLIONTV, an Internet-protocol television company that offers  
18 movies, TV shows and other video entertainment on a television through an Internet  
19 connection. The scope of work and deliverables was defined in the Agreement between the  
20 Plaintiff and the Defendants and included strategic business and marketing development and  
21 did not include the development or creation of any original designs or illustrations. ZillionTV  
22 has licensed content from major studios like, 20<sup>th</sup> Century Fox, Disney, Paramount, Sony and  
23 Warner Bros., among others. On or about August 2009 the Plaintiff independently began  
24 development and creation of a collection of original illustrations and designs called “IPTV  
25 User Interface Graphics”. The Defendants wished to license the collection of original designs  
26 to be used on ZillionTV’s “user interface” of interactive TV products.

27       4.       The Plaintiff made an arrangement to sell usage rights of the collection of  
28 original illustrations and designs to the Defendants on or about August 7, 2009 provided the

1 Defendants would pay a fee of up to \$500 per original design and above and beyond his  
2 regular consulting fees as agreed by Defendants in several emails attached hereto as  
3 EXHIBIT B. Plaintiff notified the Defendants that the “works made for hire” clause in the  
4 Agreement did not include original illustrations and designs as defined under 17 U.S.C.  
5 Section 101. The Plaintiff also notified the Defendants that a transfer of ownership may be  
6 made upon payment in full according to 17 U.S.C. Section 204. On or about September 15,  
7 2009, Defendants took copies of over 100 original illustrations and designs, including art that  
8 was later revised and/or updated. The Plaintiff further notified the Defendants that proper  
9 usage rights would be granted to the Defendant upon Plaintiffs’ receipt of payment in full  
10 and included this line in all invoices “All copyrights reserved until payment in full for all  
11 assets is received.”

12 5. The dispute arose when the Plaintiff discovered that the Defendants were  
13 using his protected works without permission and before paying for the work.

14 6. The Plaintiff gave the Defendants many opportunities to pay for the work  
15 according to their agreement and resolve the dispute in a fair manner while the Defendants  
16 continued ignoring his requests for payments, creating delays, stalling and defaulting on  
17 every promise to pay. On or about December 7, 2009, Plaintiff was told by the Defendants  
18 that they did not intend to pay him for the work. On or about December 8, 2009, Defendant  
19 applied for a registration of Copyright for the collection of work and was assigned a service  
20 request number of: 1-292458981. On or about December 13, 2009, the Plaintiff became  
21 aware that the Defendants had continued to use the protected works despite not paying for  
22 the usage rights and despite his demands to cease and desist the unauthorized use. On or  
23 about December 13, 2009, Plaintiff sent a Notice of Copyright Infringement demanding the  
24 Defendants i) cease unauthorized use of the protected works immediately and ii) provide the  
25 Plaintiff prompt written assurance that the Defendants would cease and desist their  
26 unauthorized use immediately. The notices were sent by email, fax and certified mail to ALL  
27 Defendants listed above as well as service providers known to the Plaintiff and are attached  
28 hereto as EXHIBIT C. ALL Defendants including investors and board members listed above

1 and through their negligent failure to prevent the ongoing infringement, have ignored all the  
2 Plaintiffs' cease and desist demands and have refused to pay the Defendant for the usage  
3 rights and are causing great economic damage by preventing the Plaintiff from claiming  
4 ownership or licensing his original works to any other companies, while willfully infringing  
5 on the protected works and benefiting financially and commercially by the unlawful use of  
6 the "IPTV User Interface Graphics."

7 7. Defendants and agents of the Defendants have continuously ignored the  
8 Plaintiff's demands for payment and have ignored all cease and desist notices and demands,  
9 while continuing to infringe on the Copyrighted works since at least September 15, 2009.

10 8. As a result of the Plaintiffs' attempts to be paid for the use of his work and as  
11 a result of the cease and desist notices and demands: Defendants filed a lawsuit in the  
12 Superior Court of Santa Clara County against the Plaintiff for Breach of Contract,  
13 Conversion and Defamation alleging the Plaintiff's copyright claim was "untrue" and that the  
14 Plaintiff was attempting to "extort" "excessive" payments from the Defendants. The  
15 complaint also alleges that the Plaintiff did not have the right to claim ownership of the work  
16 because of the "works made for hire" clause in the Agreement. In the State Court action, the  
17 Defendants complaint alleged that the Copyright claim by the Plaintiff is not proven, despite  
18 the cease and desist demands and the Certificate of Registration issued by the U.S. Copyright  
19 Office and attached hereto as EXHIBIT D.

20 9. The Defendants secured a preliminary injunction in State Court on February  
21 18, 2010 restricting the Plaintiff from claiming ownership of the protected works.

22 10. To date, the Defendants continue to willfully infringe on the Plaintiff's  
23 Copyrighted work without paying for the work and without express permission or license to  
24 use the work. The only communication regarding the unauthorized use was a lawsuit filed by  
25 the Defendants and an injunction in State Court against the Plaintiff, preventing him from  
26 claiming ownership over the work and from protecting and licensing the work to other  
27 companies. The Defendants continue to gain economic benefits of commercial use of the  
28 protected works while causing severe economic damage to the Plaintiff.



1           11. By this action, Plaintiff seeks to recover all of the damages incurred by  
2 Plaintiff as a result of Defendants' conduct.

3  
4                                   **PARTIES**

5           12. Plaintiff ALBERT SANDOVAL ("Plaintiff" or "Sandoval") was and is an  
6 individual residing in the County of Los Angeles, in the State of California.

7           13. Plaintiff is informed and believes, and based thereon alleges that, at all times  
8 relevant herein, Defendant ZILLIONTV CORPORATION ("Defendant" or "ZillionTV"),  
9 was and is a Delaware Corporation, and is doing business in the County of Santa Clara in the  
10 State of California.

11           14. Plaintiff is informed and believes, and based thereon alleges that, at all times  
12 relevant herein, Defendant SIERRA VENTURES ASSOCIATES IX, LLC, SIERRA  
13 VENTURES IX, L.P. and SIERRA VENTURES X, L.P. ("Defendant" or "Sierra  
14 Ventures"), was and are entities and due to duplicate records, states are unknown at this time,  
15 and is doing business in the County of Santa Clara in the State of California as ZillionTV's  
16 lead investors, board chairman and members and controlling parent company.

17           15. Plaintiff is informed and believes, and based thereon alleges that, at all times  
18 relevant herein, Defendant QWEST COMMUNICATIONS INTERNATIONAL, INC.  
19 ("Defendant" or "Qwest"), was and is a Delaware Corporation, and is doing business in the  
20 County of Santa Clara in the State of California as one of ZillionTV's lead investors and  
21 board members as well as an exclusive distributor of ZillionTV's set-top box product.

22           16. Plaintiff is informed and believes, and based thereon alleges that, at all times  
23 relevant herein, Defendant MITCHELL BERMAN ("Defendant" or "Berman"), was and is  
24 an individual, residing in Santa Clara County, in the State of California as ZillionTV's  
25 Executive Chairman.

26           17. Plaintiff is informed and believes, and based thereon alleges that, at all times  
27 relevant herein, Defendant DAVID CHARLES SCHWAB ("Defendant" or "Schwab"), was  
28

1 and is an individual, residing in Santa Clara County, in the State of California as Managing  
2 Director and an agent of Sierra Ventures and ZillionTV's Chairman of the Board.

3 18. Plaintiff is informed and believes, and based thereon alleges that, at all times  
4 relevant herein, Defendant JACK LAWRENCE ("Defendant" or "Lawrence"), was and is an  
5 individual, residing in Santa Clara County, in the State of California as ZillionTV's Chief  
6 Executive Officer and President.

7 19. Plaintiff is informed and believes, and based thereon alleges that, at all times  
8 relevant herein, Defendant ELIZABETH SEIDNER DAVIDOFF ("Defendant" or  
9 "Davidoff"), was and is an individual, residing in San Francisco County, in the State of  
10 California as Senior Vice President of Global Marketing for ZillionTV.

11 20. Plaintiff is ignorant of the true names and capacities of Defendants sued  
12 herein as DOES 1 through 100, inclusive, and Plaintiff therefore names and sues these  
13 Defendants, and each of them, by such fictitious names. Plaintiff will amend this Complaint  
14 to allege the true names of Defendants DOES 1 through 100, inclusive, when the same has  
15 been ascertained. Plaintiff is informed and believes, and on that basis allege, that each of the  
16 fictitiously named Defendants are responsible in some manner for the occurrences herein  
17 alleged, and that Plaintiffs' injuries as herein alleged were proximately caused by the acts  
18 and omissions of these Defendants.

19 21. Plaintiffs are informed and believe, and on that basis allege that, at all times  
20 herein mentioned, each of the Defendants sued herein including DOES 1 through 100  
21 inclusive, was the agent, partner, affiliate, and employee of each of the remaining Defendants  
22 and was at all times acting within the course and scope of such position and with the  
23 knowledge and consent of each other.

24  
25 **FACTS COMMON TO ALL CLAIMS**

26 22. Each of the works at issue in this action are of obvious high value and is easily  
27 discernable as professional work, screenshots showing some of the IPTV User Interface  
28 Graphics used on the ZillionTV product is attached hereto as EXHIBIT E.

23. Each of the works at issue in this action is registered to the Plaintiff with the United States Copyright Office. True and complete copies of the registration certificate for works that are known to have been infringed are attached hereto as EXHIBIT C.

24. Defendants knew the infringed works belonged to Plaintiff and even filed a lawsuit against the Plaintiff calling his attempts to be paid or to cease and desist the infringement as “extortion” and alleged that the Plaintiff’s Copyright claim was untrue and invalid.

25. Defendants have willfully infringed on the protected works since at least September 15, 2009 and have used the work commercially in the “user interface” of their set-top box product that is currently in the market.

26. Defendants, without authorization, copied, distributed and/or publicly displayed all of the copyrighted works owned by and registered to Plaintiff.

### **FIRST CAUSE OF ACTION**

**(Copyright Infringement – 17 U.S.C. §501)**

#### **Plaintiff Albert Sandoval Owns Federally Registered Copyrights of Creative Works**

27. Plaintiff repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 26, inclusive.

28. At all times relevant hereto, Plaintiff has been the creator and owner of the creative works reproduced, distributed and publicly displayed by Defendants through their Internet-Protocol Television product, including without limitation ZillionTV’s set-top box and Qwest Communications’ IPTV distribution.

29. For each of the works at issue in this matter, Plaintiff holds a copyright registration certificate from the United States Copyright Office.

30. Without authorization, Defendants reproduced and distributed the following Plaintiff owned and copyrighted works: IPTV User Interface Graphics, U.S. Copyright Registration Number VAu 1-008-719.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3  
4  
5  
6

7  
8

9

10

11  
12  
13  
14

15

16

17

18

19

20

21

## 23

## 24

25

26

27

28



1 42. Defendants induced, caused and materially contributed to the infringing acts  
2 of others by allowing and assisting others to reproduce and distribute Plaintiff's works  
3 through the ZillionTV set-top box product.

4 43. All Defendants listed above had knowledge of the infringing acts relating to  
5 Plaintiff's copyrighted works.

6 44. The acts and conduct of Defendants, as alleged above in this Complaint  
7 constitute contributory copyright infringement.

8  
9 **THIRD CAUSE OF ACTION**

10 **(Vicarious Copyright Infringement)**

11  
12 45. Plaintiff repeats and incorporates by this reference each and every allegation  
13 set forth in paragraphs 1 through 44, inclusive.

14 46. Numerous individuals and entities directly infringed Plaintiff's copyrighted  
15 works including but not limited to all Defendants listed above.

16 47. Defendants had the right and ability to control the infringing acts of the  
17 individuals or entities who directly infringed Plaintiff's works.

18 48. Defendants obtained a direct financial benefit from the infringing activities of  
19 the individuals or entities who directly infringed Plaintiff's works.

20 49. The acts and conduct of Defendants, as alleged above in this Complaint  
21 constitute vicarious copyright infringement.

22  
23 **JURY DEMAND**

24 50. Plaintiff hereby demands a jury trial in this case.

25 **PRAYER**

26 WHEREFORE, Plaintiff Albert Sandoval respectfully requests judgment as follows:

27 (1) That the Court enter a judgment against Defendants that they have:  
28

- a. willfully infringed Plaintiff's rights in federally registered copyrights under 17 U.S.C. § 501,
- b. otherwise injured the business reputation and business of Plaintiff by Defendants' acts and conduct set forth in this Complaint.

(2) That the Court issue injunctive relief against Defendants, and that Defendants, their agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with them, be enjoined and restrained from copying, posting or making any other infringing use or infringing distribution of audiovisual works, photographs or other materials owned by or registered to the Plaintiff;

(3) That the Court enter an order of impoundment pursuant to 17 U.S.C. §§ 503 and 509(a) impounding all infringing copies of Plaintiff's audiovisual works, photographs or other materials, which are in Defendants' possession or under its control;

(4) That the Court order Defendants to pay Plaintiff's general, special, actual and statutory damages as follows:

- a. Plaintiff's damages and Defendants' profits pursuant to 17 U.S.C. § 504(b), or in the alternative, enhanced statutory damages pursuant to 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of Plaintiff's copyrights; and
- b. Plaintiff's actual damages;

(5) That the Court order Defendants to pay punitive damages.

(6) That the Court order Defendants to pay Plaintiff the cost of this action and the cost of the action taken to defend against Defendants' State Court action pursuant to 17 U.S.C. § 504.

Dated: March 12, 2010

  
 ALBERT SANDOVAL  
 Plaintiff in pro se